of an agent, *Held*, incorrect, as an operator is a servant and not an agent, and the rule of agency has no application. *Western Union Tel. Co.* v. *Wofford* (1903), — Tex. —, 74 S. W. Rep. 943.

The distinction between servant and agent cannot be clearly defined, but exists. Agency relates to transactions of business with third persons; service has reference to action upon or about things. MECHEM, AG. § 2. This division line, while generally of small importance, may become practical in certain instances. *McCroskey* v. *Hamilton* (1899), 108 Ga. 640, 34 S. E. 111; *Tete* v *Lanaux* (1893), 45 La. Ann. 1343, 14 So. R. 241; *Wildner* v. *Ferguson* (1889), 42 Minn. 112, 6 L. R. A. 338.

CARRIER—REFUSAL OF PASSENGER TO PAY EXTRA FARE—ASSAULT BY CONDUCTOR ON PASSENGER WHILE ENFORCING THE COMPANY'S RULES.—By statute, the company was required to keep its ticket office open for the sale of tickets for at least one hour before the departure of each passenger train, and a passenger entering the cars without a ticket could lawfully be charged five cents in addition to the ticket rate of fare. Because of the absence of the ticket agent, from five to ten minutes before the departure of the train, the plaintiff entered the cars without a ticket, and upon demand tendered the conductor the regular ticket rate, explaining the circumstances. The conductor again demanded the train fare, and upon a further refusal to pay, ejected the plaintiff, after a struggle, using no more force than was necessary. In an action for assault and battery against the company: *Held*, there was no excuse for forcible resistance, and there could be no recovery. *Monnier* v. *N. Y. C. & H. R. R.* (1903) — N. Y. — 67 N. E. Rep. 569.

A passenger without a ticket must pay his fare or quietly leave the train, resorting to his appropriate remedy for the damages sustained, and upon resistance can recover no damages resulting therefrom, the conductor, in ejecting him, using no more force than is necessary. See *Penn. R. R. Co.* v. *Connell*, 112 Ill. 295, 54 Am. Rep. 238; *Bradshaw* v. *So. Boston R. R. Co.*, 135 Mass. 407, 46 Am. Rep. 481; *Peabody* v. *O. R. & N. Co.*, 21 Or. 121, 12 L. R. A. 823. The decision in the principal case was given by a divided court (four and three), and the dissenting opinion is well supported, many courts holding "that it is not the duty of a passenger to pay fare wrongfully demanded, but that he may stand upon his rights." See *Zagelmeyer* v. *C. S. & M. R. R.*, 102 Mich. 214, 47 Am. St. Rep. 514; *Jeffersonville R. Co.* v. *Rogers*, 38 Ind. 116, 10 Am. Rep. 103; *Erie R. R.* v. *Winter*, 143 U. S. 60.

CONSTITUTIONAL LAW—FREE SPEECH—DISTRIBUTION OF CIRCULARS.—An ordinance, under authority of statute, declaring unlawful the distribution of "dodgers, handbills, or circulars," in the city of Omaha, was enforced. *Held*, proper, as a valid exercise of the police power, and no infringement upon the constitutional right of free speech. *Anderson* v. *State* (1903), — Neb. —, 96 N. W. Rep. 149.

The general right to life, liberty, or property, is not absolute. It is limited and restricted by the necessary exercise of the police power of the state. *State* v. *Schlemmer* (1890), 42 La. Ann. 1116, 10 L. R. A. 135. As was stated in the principal case, "a police regulation * * * is not invalid simply because it may affect incidentally the exercise of some right guaranteed by the constitution." The more particular right to free speech has many boundaries. It does not extend immunity to libel or slander, does not allow dissemination of immoral or obscene matter, does not permit malicious interference, nor does it sanction profanity, or prevent the state from dictating the conduct of

persons on public property. *Arnold* v. *Clifford* (1835), Fed. Cas. No. 555 [2 Sum. 238]; *In re Banks* (1895), 56 Kans. 242, 42 Pac. 693; *United States* v. *Harmon* (1891), 45 Fed. R. 414; *Thomas* v. *Railway Co.* (1894), 62 Fed. R. 803; *State* v. *Warren* (1893), 113 N. C. 683, 18 S. E. 498; *Commonwealth* v. *Davis* (1895), 162 Mass. 510, 26 L. R. A. 712. And it may be further circumscribed, as in the principal case, when it becomes a danger to the public health or safety.

CONSTITUTIONAL LAW—MASTER AND SERVANT—WEEKLY PAYMENT OF WAGES.—A statute required employers to make weekly payment in full for labor, and in effect forbade contracts on any other terms. In an action for non-compliance and for the statutory penalty, *Held*, that the act was unconstitutional. *Republic Iron & Steel Co.* v. *State* (1903), — Ind. — 66 N. E. Rep. 1005.

While admitting power in the legislature "to regulate the payment of wages when the same are paid at unreasonable periods, or that a community composed largely of workingmen may not be injuriously affected by unduly delayed payments," the court denied that the statute in question was a reasonable and proper police regulation, and declared it invalid as an infringement upon the right of private contract, and as depriving the persons affected thereby of property without due process of law. Although the number of adjudications upon legislative regulation of agreements between master and servant is not yet large, it is believed that the decision in the principal case is a sound one. *Braceville Coal Co.* v. *People* (1893), 147 Ill. 66, 35 N. E. 62, 22 L. R. A. 340, 37 Am. S. R. 206; *Commonwealth* v. *Isenberg*, 4 Pa. Dist. R. 579, 8 Kulp 116; *State* v. *Coal Co.* (1889), 33 W. Va. 188, 10 S. E. 288, 6 L. R. A. 359, 25 Am. S. R. 891; *Godcharles* v. *Wigeman* (1886), 113 Pa. S. 431, 6 Atl. 354; *State* v. *Loomis* (1893), 115 Mo. 307, 22 S. W. 350, 21 L. R. A. 789; *Commonwealth* v *Perry* (1891), 155 Mass. 117, 14 L. R. A. 325, 28 N. E. 1126. But see *Re House Bill 1230* (1895), 163 Mass. 589, 40 N. E. 713, 28 L. R. A. 344; *State* v *Brown* (1892), 18 R. I. 16, 25 Atl. R. 246, 17 L. R. A. 856; *Skinner* v. *Garnett Co.* (1899), 96 Fed. R. 735; *Hancock* v. *Yaden* (1890), 121 Ind. 366, 23 N. E. 253, 16 Am. S. R. 396, 6 L. R. A. 576.

CONSTITUTIONAL LAW—MUNICIPAL CORPORATIONS—MINIMUM WAGE LAW.—A statute provided that unskilled labor employed upon public works of the state, counties, cities and towns, should receive not less than twenty cents an hour for such labor, and provided a penalty for every violation thereof. Defendant, engaged in constructing a municipal light plant, paid an employee but fifteen cents. On suit to recover difference and penalty, *Held*, that the statute was unconstitutional. *Street* v. *Varney Electrical Supply Co.* (1903), — Ind. —, 66 N. E. Rep. 895.

The act was held invalid on the ground that the legislature's powers over a municipality as an agency of the state, did not extend to forcing a municipality to pay an arbitrary price for labor on public works, and by so doing virtually confiscate the property of the taxpayers; further, that the act was class legislation, and resulted in a deprivation of property without due process of law. See discussion in I MICH. LAW REVIEW, 511, of the recent case of *Cleveland* v. *Clements Bros. Construction Co.* (1902) — Oh. S. —, 65 N. E. 885, relied upon, together with *People* v. *Coler* (1901), 166 N. Y. 1, 59 N. E. 716, 52 L. R. A. 814, 82 Am. S. R. 605, by the court in the principal case.

CORPORATIONS-PARTNERSHIP WITH AN INDIVIDUAL.—A. B. Perry and a Corporation did business together as a partnership, and as such had an